Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
2000 Biennial Regulatory Review	)	WT Docket No. 01-14
Spectrum Aggregation Limits for	)	
Commercial Mobile Radio Services	)	

To: The Commission

REPLY COMMENTS ON PETITIONS FOR RECONSIDERATION

Verizon Wireless supports the Petitions for Reconsideration of the Commission's *2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio*[1] that request that the FCC reconsider its decision to retain the cellular cross-interest rule[2] in Rural Service Areas ("RSAs"). Verizon Wireless agrees with the Petitioners that the Commission must immediately eliminate the cellular cross-interest rule for RSAs as it has already done for Metropolitan Statistical Areas ("MSAs").

The FCC adopted the cellular cross-interest rule, which substantially limits a carrier from owning interests in both A and B bands in the same cellular market, more than a decade ago when there were only two cellular carriers in each geographic market. In the competitive environment that exists today, this rule has lost any validity, and clearly is no longer necessary to insure competition in RSAs. No transaction between

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[1] *See In the Matter of 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio services*, WT Docket No. 01-14, FCC 01-328 (rel. Dec. 18, 2001) ("*Report and Order*"), *Petitions for Reconsideration of Action in Rulemaking Proceeding*, *Public Notice*, Report No. 2540 (Rel. March 15, 2002) (placing on public notice two Petitions for Reconsideration filed by Dobson

two cellular carriers should be presumptively prohibited. Verizon Wireless agrees with Cingular, Rural Carriers and the Cellular Telecommunications and Internet Association ("CTIA") that the *Report and Order* failed to sustain the Commission's burden to establish why retaining a flat rule affecting only one type of CMRS and only one type of geographic market is necessary. Sprint's arguments against repealing the cross-interest rule, e.g., that there may not be efficiency gains in allowing cellular providers to combine or whether such a combination could lead to higher roaming rates, are best addressed on a case-by-case basis rather than by prohibiting such combinations for an entire class of carriers.[3]

As Cingular notes, a cellular licensee would be free to acquire 55 MHz of MTA PCS spectrum completely covering its cellular RSA (giving it 80 MHz of spectrum in the RSA), as long as the RSA's population is less than 10 percent of the MTA's population. Yet, the same cellular licensee could not acquire a second 25 MHz cellular licensee in the same RSA even though it would result in the cellular licensee holding just 50 MHz in RSA and no presence in much of the MTA.[4] This is clearly arbitrary.[5]

Furthermore as Cingular notes, the "Commission's analysis fails to take into consideration that nationwide or regional rates do, in fact have an effect" on prices for CMRS services in RSAs.[6] Instead, the Commission appears to presume that an RSA is the appropriate geographic market to assess competition, but failed to explain why.

Communications Corporation, Western Wireless Corporation, and Rural Cellular Corporation ("Rural Carriers"), and Cingular Wireless LCC ("Cingular") (jointly "Petitioners")).

[2] 47 C.F.R. § 22.942.

[3] *See* Sprint PCS Opposition (filed April 5, 2005) at 4 and 7.

[4] *See* Cingular Petition at 2, n. 5.

[5] *See* Comments of the Cellular Telecommunications & Internet Association in Support of Petitions Seeking Reconsideration, WT Docket No. 01-14 (filed April 5, 2002) at 2.

[6] *See* Cingular Petition at 4.

The arbitrary nature of the Commission's decision is obvious. As the Rural Carriers argue, while the Commission asserts as one reason for retaining the prohibition that "fifty-six percent of RSA counties have two or fewer facilities-based providers,"[7] the FCC fails to note the converse conclusion, that is, that forty-four percent of RSA counties have three or more facilities based providers.[8] The Commission also concludes that "eighty-six percent of counties have four or more facilities-based CMRS providers."[9] This means that fourteen percent of the counties in MSAs have three or fewer facilities-based providers. "In sum, the decision to eliminate the rule for MSAs but not RSAs is arbitrary and capricious because it results in stricter ownership limitations with respect to licenses in many RSAs with *three or more* facilities-based carriers than for licenses in many MSAs with *three or fewer* competitors."[10]

In its *First Biennial Review Order* in 1999 the Commission raised the cap in rural areas to 55 MHz, stating that "the opportunity cost of rural spectrum rights is likely near zero, and the risks of anticompetitive conduct by foreclosing entry through the monopolization of spectrum are low."[11] In 2001, the Commission found that the cellular duopoly no longer exists and that CMRS markets are sufficiently competitive to warrant elimination of the spectrum cap for all markets including RSAs by January 1, 2003.[12] The Commission fails to explain how, it could find that the "risks of anticompetitive conduct by foreclosing entry through the monopolization of spectrum" were low enough to raise the cap in RSAs higher than the 45 MHz limit applied to MSAs, but then, could

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[7] *Report and Order* at 89.
[8] Rural Carriers Petition at 5.
[9] *Report and Order* at ¶ 86.
[10] Rural Carriers Petition at 5.
[11] *See In re: 1998 Biennial Regulatory Review, Spectrum Aggregation Limits for Wireless Telecommunications Carriers, Report and Order*, WT Docket No. 98-205, 15 FCC Rcd 9219 (1999) ("*First Biennial Review Order*") 15 FCC Rcd 9219, ¶ 84.

find that there was sufficient competition for purposes of repealing the cap in all markets, but still could not find sufficient competition to eliminate the cellular cross-interest rule in RSAs. In effect, the FCC reversed course by moving from a set of limits that were less restrictive for rural areas to limits that are now *more* restrictive.

Verizon Wireless demonstrated in its comments in this proceeding that the cellular cross-interest rule results in regulation of PCS and cellular licensees that is sharply asymmetrical.[13] PCS carriers are not prohibited from acquiring other PCS carriers in a market, and can thus currently acquire a full 55 MHz in a single band of spectrum. Theoretically, after January 1, 2003, a PCS licensee could acquire all 120 MHz of PCS spectrum in a single geographic market. On the other hand, as a result of retaining the cellular cross-interest rule in some geographic areas, cellular carriers will still be limited to 25 MHz of cellular spectrum in RSAs. The Commission's failure to eliminate the cellular cross-interest rule when eliminating the spectrum cap further widens the regulatory disparity between cellular and other CMRS licensees.[14]

The Commission admits that, "without more comprehensive information in the record, however, we are unable to conclude that repeal of the cellular cross-interest rule in RSAs is appropriate at this time."[15] This conclusion is contrary to Section 11 of the Communications Act, which requires the Commission to review its regulations, determine which of them are "no longer necessary in the public interest as the result of

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[12] *Report and Order* at ¶ 7.
[13] *See* Comments of Verizon Wireless at page 16.
[14] There was only one opposition to the Petition for Reconsideration, Sprint PCS. (Sprint is a PCS-only carrier and thus would likely be advantaged if the cellular cross-interest rule were to stay in place in RSAs.) Sprint states "the history of the CMRS industry demonstrates that competition in the mobile sector did not intensify until PCS licensees entered the market to provide additional competition to incumbent cellular carriers." Sprint PCS Opposition at 5. Yet Sprint fails to explain how a regulation that applies only to cellular carriers will facilitate entry of PCS carriers into rural markets.
[15] *Report and Order* at ¶ 89.

meaningful economic competition," and the "repeal or modify" the unnecessary rule.[16] Section 11 establishes a presumption that a rule is no longer necessary, placing the burden on the Commission to affirmatively determine that the rule is necessary in the public interest; otherwise, it must be repealed or modified.[17] Even Sprint notes that the Commission's decision rests on the *lack of evidence* of competition in RSAs rather than a finding of the *lack of competition* in RSAs.[18] Accordingly, the Commission's decision is contrary to law, and the Petitions must be granted.

[16] 47 U.S.C. § 161.

[17] *See Fox Television Stations, Inc., v. FCC,* 280 F. 3d 1027, 1048 (D.C. Cir 2002).

[18] *See* Sprint PCS Opposition at 2 (citing *Report and Order* at n.254 ("The record contains neither anecdotal information nor data on the state of competition in RSAs")).

CONCLUSION

For the foregoing reasons, Verizon Wireless joins Petitioners in requesting that the Commission reconsider its *Report and Order* and eliminate the cellular cross-interest rule in all geographic markets.

Respectfully submitted,

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Certificate of Service

I hereby certify that on this 15th day of April copies of the foregoing "Reply Comments on Petitions for Reconsideration" in WT Docket 01-14 were sent by first class mail to the following parties:

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